

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

November 19, 2009

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board Members:

SUBJECT: Authorization to Begin Process to Subordinate Mineral Rights over Conservation Easement to be acquired by the Maui Coastal Land Trust on Lands Owned by Pietsch Properties, LLC, in Pupukea, Oahu; TMK (1) 5-9-005:067.

SUMMARY:

On October 1, 2009, the Natural Resources Conservation Service (NRCS), requested the assistance of DOFAW in seeking the approval of the Board for the initiation of the process to consider the subordination of mineral rights for a conservation easement to be acquired by the Maui Coastal Land Trust (MCLT) with \$609,425 in grant funds from the State Legacy Land Conservation Program (LLCP). In its 2009 project application, MCLT proposed matching grant funding of \$1.1 million from the federal Natural Resource Conservation Service (NRCS) Farm and Ranchland Protection Program (FRPP) and \$550,000 in funds from the City and County of Honolulu Clean Water and Natural Lands Program (CWNL) to meet its total estimated project cost of \$2,318,850.

DOFAW requests permission to process the NRCS request pursuant to HRS sections 182-2 and 182-4, and the June 30, 2009, Memorandum of Understanding (MOU) between the Board and NRCS (approved by the Board at its August 22, 2008, meeting) (Attachment 1).

BACKGROUND:

On February 13, 2009, the Board approved a Legacy Land Conservation Program grant of \$609,425 to MCLT for the acquisition of an agricultural conservation easement over 27.44 acres, in Pupukea, North Shore, Island of Oahu, ("Subject Property") to be held by the North Shore Community Land Trust (NSCLT). On May 20, 2009, the Governor authorized the release of funds for this grant (Attachment 2).

MCLT is also receiving acquisition funding for this project from the federal NRCS FRPP. MCLT's 2008 application for funding states that MCLT has secured approximately \$1.1 million in federal FRPP funding for this project, in addition to a pending award of approximately \$550,000 matching fund from the City and County of Honolulu Clean Water and Natural Lands Fund (Attachment 3). According to the October 1, 2009, NRCS request, the NRCS is requiring the subordination of mineral

rights held by the State of Hawaii prior to releasing funds through the FRPP to MCLT for this acquisition.

MCLT will approach the Board for permission to transfer the property to NSCLT prior to transferring to NSCLT as required by HRS §173A-9.

The Subject Property is located in Pupukea on the North Shore of the Island of Oahu, Ko'olaupia District; TMK (1) 5-9-005:067. It is zoned Agricultural District (State) and Ag-2 General Agricultural District (county). The current use of the property is residential and agricultural.

DISCUSSION:

DOFAW is requesting permission to process the NRCS request pursuant to HRS sections 182-2 and 182-4, and the June 30, 2009, Memorandum of Understanding (MOU) between the Board and NRCS (approved by the Board at its August 22, 2008, meeting). Pursuant to HRS section 182-2 the Board may, "release, cancel, or waive the reservation whenever it deems the land use, other than mining, is of greater benefit to the State as provided for in section 182-4." The process in HRS section 182-4 includes publishing notices of public hearing and conducting a public hearing on the proposal for the subordination of the State's right to mine and extract minerals for the purpose of promoting an agricultural conservation easement with MCLT, NSCLT, and federal NRCS.

The process for subordinating mining rights is as follows:

1. Publication of a notice of the proposal to subordinate mining rights on the Subject Property at least once in each of three successive weeks in a newspaper of general circulation in the City and County of Honolulu.
2. Hold a public hearing within six weeks of the first publication notice.
3. Following the public hearing, the Board shall determine whether the protection of the land through the subordination of mineral rights is of greater benefit to the State than potential mining uses of the land.
4. If the Board determines that the protection of the land through the subordination of mineral rights is of greater benefit to the State than potential mining uses of the land, the Board may then authorize the issuance of a subordination of mineral rights to NRCS subordinating the State's right to mine or extract minerals from the Subject Property.


NRCS, as the applicant, is required to pay the administrative costs associated with the public notice and hearing that are required by section 182-4, and must provide survey maps and descriptions as may be required.

At this time, DOFAW staff is requesting authorization to begin the process by publishing the public notice and conducting a public hearing on the proposal. After the public hearing, staff will report its findings to the Board and, at that time, make a recommendation as to whether the State should subordinate its mining rights on the Subject Property.

RECOMMENDATIONS: That the Board:


- A. Authorize staff to publish public notices of the proposal for the subordination of the State's right to mine and extract minerals on the Subject Property for the purpose of promoting an agricultural conservation easement project with the U.S. NRCS, MCLT, and NSCLT.
- B. Authorize staff to conduct a public hearing on the proposal and authorize the Chairperson to appoint a public hearings officer for this hearing.
- C. Direct staff to report back to the Board, following the public hearing, with a recommendation on the proposal.

Respectfully submitted,


PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

Attachments (3)

APPROVED FOR SUBMITTAL:


LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

